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UNCLAS SECTION 01 OF 02 OTTAWA 001364

SIPDIS

STATE FOR IO/T (BLACKWOOD), WHA/CAN (RUNNING)

HHS FOR OFFICE OF THE SECRETARY, OFFICE OF
INTERNATIONAL AFFAIRS (STEIGER)

GENEVA FOR HOHMAN

E.O. 12958: N/A

TAGS: [AORC](#) [PREL](#) [CA](#) [WHO](#)

SUBJECT: Framework Convention on Tobacco Control
(FCTC): Canadians Suggest We Reexamine Our Stance

Ref. (A) OTTAWA 1304
(B) SECSTATE 106632

[11](#). This cable contains an action request, see paragraph
[11](#).

[12](#). As a follow-up to the official GoC response to our request for support on removing the Reservations Clause (Article 30) of the FCTC (Ref A), Canada's Department of Foreign Affairs and International Trade (DFAIT) has provided Embassy a detailed response to USG concerns raised in reftel B.

[13](#). The DFAIT document claims that the GoC has examined carefully USG concerns, and in particular the areas in which the USG had indicated it might take reservations (Ref B). It offers the GoC assessment of three areas in particular: Advertising, Promotions and Sponsorship; Warning Labels and; Distribution of Free Samples.

Advertising, Promotion and Sponsorship

[14](#). Our DFAIT interlocutors note that initially, this was an area that posed challenges for Canada as well, given their own constitutional requirements. The GoC, the documents states, "worked diligently to negotiate wording that allowed for a constitutional "carve-out". In our view the opening words in each of Articles 13.2, 13.3 and 13.4 provide excellent scope for governments to take action that is consistent with their constitutions."

[15](#). The DFAIT document also points out "the U.S. has previously ratified agreements with limitations on advertising containing a similar constitutional qualification. A constitutional qualification ("with due regard to its constitutional provisions") was used in Article 10 of the 1971 Convention on Psychotropic Substances, in the context of an obligation to prohibit advertising of psychotropic substances to the public. The UN commentary on this provision suggests that Article 10(2) was drafted in order to require States to prohibit the advertisement of these substances to the extent that they are allowed to do so by their Constitutions. No reservations or declarations have been made regarding this clause, suggesting that the qualifier has been sufficient to address the concerns of States Parties (including the United States), which include constitutional protections of the right to freedom of expression."

Warning Labels

[16](#). With respect to Warning Labels, the DFAIT document states: "With respect to Article 11.1, we would note that the United States has ratified other treaties that have required legislative changes."

Distribution of Free Samples

[17](#). The DFAIT document declares that: "Article 16.2 is not mandatory, since it provides the flexibility to simply "promote" the prohibition of the distribution of free tobacco products to the public and minors."

Canada's Conclusion

[18](#). The DFAIT document further states, "Based on these considerations, our view is that the text of the Convention should have enough flexibility to meet the

needs of the U.S. Government."

9. The DFAIT document notes ".a number of governments negotiating in Geneva, particularly representing developing countries, were concerned that if reservations were permitted in the Convention, their governments would come under intense pressure from tobacco companies to enter a large number of reservations and undermine the treaty. That is why many governments resisted so strongly provisions that would allow for reservations. We expect that such concerns would remain, and that any effort to reopen the treaty text at the World Health Assembly could be quite divisive and problematic."

10. The DFAIT document concludes that the GoC ".would strongly encourage the U.S. government to re-examine the flexibility that exists in the current text and make the best use possible of this flexibility. We (Canada) would encourage the U.S. government not to reopen the text at the World Health Assembly."

11. Comment and Action request: The points contained in the DFAIT document follow closely similar arguments made by the Canadian Cancer Society in its recent letter to Ambassador Cellucci. While we hold out little hope of changing the GoC's position prior to the World Health Assembly (WHA) next week, we would appreciate cleared points that we can use in responding to DFAIT and to press inquiries which we expect as news of our position on the FCTC begins to come out of Geneva.

Cellucci